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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/749,255
Filing Date: December 27, 2000
Appellant(s): FLICKINGER, GREGORY

Andrew W. Spicer
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/23/2007 appealing from the Office action mailed 6/9/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct

(4) Status of Amendments After Final

The statement of the status of claims contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Alexander et al. (U.S. Patent No. 6,177,931)

Hite et al. (U.S. Patent No. 6,002,393)

Hendricks et al. (U.S. Patent No. 6,738,978)

Esch et al. (U.S. Patent No. 5,283,639)

Boylan, III et al. (U.S. Patent No. 6,799,326)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10, 12, 28-33, 38 and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander et al. (U.S. Patent No. 6,177,931) in view of Hite et al. (U.S. Patent No. 6,002,393).

Referring to claim 28, Alexander discloses storing IPG ads (see Column 5, Lines 5-8), the IPG ads being stored in an ordered list (see Column 5, Lines 13-15).

Alexander also discloses linking at least one IPG ad with at least one programming ad (commercial) to form at least one IPG-programming ad combination (see Column 19, Lines 24-37 for displaying a sports program in a PIP that represents a television program (news advertising or sports programming/ads) and a related advertisement in the Ad Window).

Alexander also discloses displaying one or more IPG ads from the at least one IPG-programming ad combination in the IPG when the IPG is invoked immediately prior to or immediately subsequent to the display of a programming ad, wherein the IPG ads are displayed in accordance with the IPG ad stored (see again Column 19, Lines 24-37 for displaying a sports program in a PIP that represents a television program (news advertising or sports programming/ads) and a related advertisement in the Ad Window).

Alexander also discloses reordering the IPG ad stored in accordance with the displayed programming ad (see Column 19, Lines 13-37 for displaying information in the virtual ad channel and ad window when a sports or news channel is selected, therefore, if a different channel is selected different information in these areas are displayed and are therefore, inherently reordered). Also note Column 22, Line 19 through Column 23, Line 33 for more examples of reordering the IPG ads for display in virtual ad slots.

Alexander fails to disclose the specific memory structure of a queue to store the IPG and programming ads, as well as programming ads that are to be inserted in a programming avail.

Hite discloses the use of keeping data (specifically advertisements) in an Ad Queue of memory 616 (see Column 12, Lines 15-18), as well as using this Ad Queue to control which commercial are displayed/inserted in a programming avail (see Column 12, Lines 18-21). The examiner notes that by the use of the programming avail of Hite, which uses an ordered list of programming ads to be inserted into a programming avail, and the PIP window of Alexander, when the PIP window of Alexander displays a program, the Ad window will display an advertisement related to the program, and when the PIP window shows a programming ad (news story), the Ad window will show an advertisement related to the programming ad.

It would have been obvious to a person of ordinary skill in the art, to modify the virtual ad channel and ad window storage, as taught by Alexander, using the Ad Queue, as taught by Hite, for the purpose of targeting commercials to those particular consumers who represent only the best prospects for an advertiser (see Column 1, Lines 50-52 of Hite).

Referring to claim 10, Alexander discloses the interactive IPG ad allows a viewer to request additional information regarding a particular linked IPG ad including directly accessing a website via an EPG ad (col. 27, lines 19-47; col. 17, line 48 – col. 18, line 12).

Referring to claim 12, Alexander discloses the IPG ad is displayed in the IPG when the IPG is invoked during the presentation of one of the programming ads col. 26, line 61 – col. 27, line 2).

Referring to claim 29, see the rejection of claim 28 for displaying information in the virtual ad channel and ad window when a sports or news channel is selected, therefore, if a different channel is selected different information in these areas are displayed and are therefore, inherently reordered (see Column 19, Lines 13-37).

Referring to claim 30, Alexander teaches that the ads are displayed to advertise further information about a broadcast program (see Column 17, Lines 44-67 and Column 18, Lines 1-32).

Referring to claims 31-32, see the rejection of claims 28-29, respectively.

Referring to claim 33, see the rejection of claim 30.

Referring to claims 38 and 40, see the rejection of claims 10 and 12, respectively.

Referring to claims 41-42, see the rejection of claim 28 for the reordering of the IPG ads based on what channel is selected by the user, which dictates which IPG ads to display and further note Hite for teaching that ads can be stored in a queue data structure.

Claims 2-3, 5, 34-35 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander et al. (U.S. Patent No. 6,177,931) in view of Hite et al. (U.S. Patent No. 6,002,393) further view of Hendricks et al. (U.S. Patent No. 6,738,978).

Referring to claim 2, although Alexander and Hite suggest targeted advertisements, Alexander and Hite fail to specifically disclose wherein at least one of the IPG ads or at least one of the programming ads is a targeted ad, thus forming a targeted-IPG programming ad combination, as claimed.

However, Hendricks, in an analogous art, teaches targeted advertising wherein programming ads are targeted ads, and further, the targeted advertising routine incorporates subscriber groups with selected targeted advertisements assigned to groups of subscribers (Fig. 17; col. 35, line 65 – col. 36, line 28; col. 37, line 1 – col. 38, line 55) for the benefit of utilizing viewer demographic information and viewing habits to determine those advertisements that are of the most interest to particular viewers (see col. 4, lines 48-51 and col. 5, lines 30-35).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the IPG-programming ad combination of Alexander and Hite to incorporate at least one of the programming ads is a targeted ad, thus forming a targeted IPG-programming ad combination, as taught by Hendricks for the benefit of utilizing viewer demographic information and viewer habits to determine those advertisements that are of the most interest to particular viewers in a television advertising system.

The limitations of claim 3 are encompassed by the teachings of Alexander in view of Hendricks, as discussed above relative to claim 2. Specifically, Hendricks teaches assigning advertisements to at least one subscriber group, the subscriber group comprising at least one subscriber (col. 38, lines 15-36).

The limitations of claim 5 are encompassed by the teachings of Alexander in view of Hendricks, as discussed above relative to claim 3. Specifically, Hendricks teaches discloses assigning programming ads to one or more subscriber groups (see Hendricks at (Fig. 17; col. 35, line 65 – col. 36, line 28; col. 37, line 1 – col. 38, line 55). Alexander discloses forming an IPG-programming ad combination when the broadcast ad is displayed and the EPG is invoked during the display of the broadcast ad (see Alexander at col. 26, line 61 – col. 27, line 2). Thus, the IPG-programming ad combination is formed subsequent to the assignment of the programming ad to a subscriber group.

Referring to claims 34-35 and 37, see the rejection of claims 2-3 and 5, respectively.

Claims 4 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander et al. (Alexander), U.S. Patent No. 6,177,931 in view of Hite et al. (Hite), U.S. Patent No. 6,002,393 in further view of Hendricks et al (Hendricks), U.S. Patent No. 6,738,978, as applied to claim 3, further in view of Esch, U.S. Patent No. 5,283,639.

As for claim 4, the teachings of Alexander in view of Hite in further view of Hendricks are relied upon as discussed above, relative to claim 3. Alexander in view of Hite in further view of Hendricks fails to disclose the targeted IPG-programming ad combination is formed prior to the assignment of the combination to one or more subscriber groups, as claimed.

However, Esch, in an analogous art, teaches combining elements (text, audio, graphic overlays, etc.) of an advertisement prior to assignment of the advertisement to a targeted group (col. 11, lines 11-66; col. 8, line 42 – col. 9, line 17). The process of combining elements with advertisement data is analogous to the claimed procedure for combining the IPG ad element with the broadcast ad element. The motivation to combine the above teaching of Esch is to customize advertising communications at a remote site to combine content data signal with locally (e.g., local broadcast facility) originated content data signals (see col. 1, lines 58-64).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the targeted IPG-programming ad combination taught by Alexander in view of Hite in further view of Hendricks to incorporate the targeted IPG-programming ad combination is formed prior to the assignment of the combination to one or more subscriber groups, as taught by Esch, for the benefit of customizing advertising communications at a remote site to combine content data signals with locally originated content data signals in a television advertising system.

Referring to claim 36, see the rejection of claim 4.

Claims 11 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander et al. (Alexander), U.S. Patent No. 6,177,931 in view of Hite et al. (Hite), U.S. Patent No. 6,002,393 in further view of Boylan, III et al. (Boylan), U.S. Patent No. 6,799,326.

Referring to claim 11, the disclosure of Alexander and Hite are relied upon, as discussed above relative to claim 28. Alexander and Hite fail to disclose a viewer interaction with said IPG ad causes a related linked programming ad to be subsequently displayed.

However, Boylan, in an analogous art, teaches interactive IPG ads wherein the user selects a first (global) IPG advertisement and a second (local) ad, related and linked to the first ad, is subsequently displayed (Fig. 13; col. 7, line 65 – col. 8, line 56, disclosing global and local advertisement data; col. 9, line 62 – col. 10, line 19, describing presentation of local advertisement subsequent to selection of global ad (i.e., local ad is related and linked to the selected global ad) for the benefit of providing additional local advertising information tailored to the particular region of the viewer (see col. 8, lines 4-7).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the interactive IPG advertisements of Alexander and Hite to incorporate a viewer interaction with said IPG ad causes a related linked programming ad to be subsequently displayed, as taught by Boylan, for the benefit of providing additional local advertising information tailored to the particular region of the viewer.

Referring to claim 39, see the rejection of claim 11.

(10) Response to Argument

(1) Rejection under 35 U.S.C. §103(a) over Alexander in view of Hite

(a) Claims 10, 12, 28-33, 38 and 40-42

(i) There is No Apparent Reason to Combine the References

Applicant argues that there is no apparent reason to combine the references because Alexander and Hite provide conflicting teachings. Applicant notes that Alexander teaches showing a particular ad window and PIP window combination based on the item in the EPG that is currently selected, while Hite teaches away from Alexander and suggests showing a particular programming ad based on the profile of the user as stored in the "Consumer Database".

As stated in the Final Rejection dated 6/9/2006, Applicant has not considered the combination of the features of Alexander and Hite. Alexander stores EPG ads and links the ads according to the programming ad being displayed and that Alexander only states that the EPG ads are stored in RAM with no teaching of a specific memory structure to store the EPG ads. Hite (**in a second embodiment of the invention**) also teaches a RAM at the user's video receiving device that stores ads, but further teaches that the ads are stored in an Ad Queue. Therefore, Alexander has been modified to use the specific data structure of an Ad Queue in order to not only to target consumers with specific Ads (**as stated in the previous Office Action**), but also to provide a means of dealing with the clutter resulting from hundreds of channels of video and audio programming containing advertising (**further note Column 2, Lines 5-7 of Hite**).

Therefore, by properly organizing the ads stored in the RAM memory of Alexander by using the Ad Queue of Hite, the consumer can quickly access specific ads that relate to the commercials displayed by the advertiser.

The examiner further notes that the examiner also does not agree that Alexander and Hite provide conflicting teachings. While both references teach storing ads (**Hite specifically storing ads in an Ad Queue**), Alexander also teaches displaying transmitting ads to a user's client device based on the user's profile stored in a consumer database (**see Column 32, Line 22 through Column 35, Line 13**).

Therefore, Alexander and Hite do not teach conflicting teachings and the examiner further notes that because both references teach using a viewer profile to transmit specific ads to a user's client device, the user's client device simply receives a more targeted set of ads that are tailored to the user's interests. The examiner notes that this feature only affects which advertisements are received from a transmission headend/server and is independent of how ads are stored and accessed from a RAM/Ad Queue in the memory of the user's client device. Further note Column 12, Lines 18-21 for accessing the targeted commercials transmitted to user's client device from the Ad Queue of Hite, therefore targeted advertisement have already been transmitted and stored by the user's client device of Hite (**further note Column 7, Lines 7-60 of Hite for transmitting targeted ads to a user's client device**) and the Ad Queue is simply used to retrieve ads related to the commercials displayed on the user's television.

(ii) The Proposed Combination Changes the Principle of Operation

Applicant argues that the combination of Alexander and Hite is improper because the combination changes the principle of operation for the same reasons described above. See the examiner rebuttal above for how Alexander and Hite do not provide conflicting teachings.

(iii) The Proposed Combination Does Not Teach or Suggest All Claim

Elements

Applicant argues that Alexander in view of Hite does not teach an IPG ad queue containing an ordered list of IPG ads. The examiner disagrees and notes that both Alexander and Hite teach an ordered list of IPG ads.

As stated in the Final Rejection dated 6/9/2006, although Alexander is silent as to what type of order the ads are stored in, Alexander does teach that ads are stored in RAM. Therefore, Alexander inherently teaches that ads are stored in a particular type of order (e.g. random, consecutive or by genre) by simply teaching that the ads or stored in RAM.

The examiner further notes that Hite is used to add the functionality of an Ad Queue to Alexander, which defines a particular type of order for the storage of the ads. Therefore, even if Alexander did not teach an ordered list, Hite teaches a particular type of ordered list.

Applicant also argues that the combination of Alexander and Hite fail to teach displaying IPG ads, wherein the IPG ads are displayed in accordance with the IPG ad queue.

As stated above, the Ad Queue of Hite is used to modify the RAM storage device of Alexander to provide the teachings of displaying ads in accordance with an IPG ad queue. Hite clearly teaches displaying ads in accordance with an IPG ad queue at Column 12, Lines 15-16.

Applicant also argues that the combination of Alexander and Hite fail to teach reordering the IPG ads queue in accordance with the displayed programming ad.

The examiner has previously cited Column 19, Lines 13-37 for linking a displayed commercial or television program segment to an ad stored in memory. The examiner notes that if an ad is retrieved from RAM and displayed, the RAM is implicitly re-ordered based on the stored ad being retrieved and either deleted or reallocated to RAM after the ad has been viewed. However, Alexander further explicitly teaches reordering of IPG ad storage at Column 26, Lines 30-56, which teaches that ads can be dynamic and displayed in order according to assigned priority. Therefore, at the time a priority is further assigned to the stored ads in RAM, the ads are reordered based on the assigned priority, because the higher priority ads will be displayed before other lower priority ads. Even further, Alexander teaches assigning priority based on a user's preference profile (see Column 27, Lines 3-7).

Applicant also argues that reordering of an IPG ad queue cannot be taught in the absence of the queue. The examiner notes that while Alexander teaches reordering ads in a memory/RAM device, Hite is used to modify the memory/RAM device to organize the ordered/reordered ads in a Ad Queue storage device (**see again Column 12, lines 3-21 of Hite**).

(2) Rejection under 35 U.S.C. §103(a) over Alexander in view of Hite in further view of Hendricks

(a) Claims 2-3, 5, 34-35 and 37

In regards to the Applicant's argues regarding the rejections of claims 2-3, 5, 34-35 and 37, see the examiner's rebuttal above.

(3) Rejection under 35 U.S.C. §103(a) over Alexander in view of Hite in further view of Hendricks in further view of Esch

(a) Claims 4 and 36

In regards to the Applicant's argues regarding the rejections of claims 4 and 36, see the examiner's rebuttal above.

(4) Rejection under 35 U.S.C. §103(a) over Alexander in view of Hite in further view of Boylan

(a) Claims 11 and 39

In regards to the Applicant's argues regarding the rejections of claims 11 and 39, see the examiner's rebuttal above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jason Salce

February 1, 2008


JASON SALCE
PRIMARY PATENT EXAMINER

Application/Control Number:
09/749,255
Art Unit: 2623

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